IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4516 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

C P AUTO CORPORATION

Appearance:

1. Criminal Misc.Application No. 4516 of 1997

Mr V M Pancholi, APP for Petitioner No. 1

MR MB GANDHI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 04/04/2002

ORAL JUDGEMENT

This is an application under section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code')

filed by the State of Gujarat through the Weights & Measures Supdt. at Junagadh challenging the judgment and order dated 15.5.1997 recorded by the learned Sessions Judge, Junagadh in Criminal Revision Application No.130/96.

2. It appears from the record that the aforesaid officer of the State of Gujarat had filed a criminal case being Criminal Case No.5013/1994 for offence punishable under the Standard of Weights and Measures Act, 1976 against the contesting respondents. A contention was raised before the learned Judicial magistrate Fist Class, Junagadh in the aforesaid case that the complaint was barred by limitation. The learned Magistrate heard the parties and turned down the said request of the present respondents by order dated 3.7.1996. The learned Magistrate also found that the complaint was filed within limitation and, therefore, it could not be dismissed on the ground of limitation. The learned Magistrate, therefore, directed that the trial will proceed according to law. Feeling aggrieved by the said order of the learned Magistrate, the respondents herein preferred criminal revision application No.130/96. The learned Sessions Judge heard the said matter and found that the complaint was barred by law of limitation prescribed in the said Code and therefore, the learned Sessions Judge allowed the said revision application and set aside the order passed by the learned Magistrate. The learned Sessions Judge also directed that the proceedings in the said Criminal Case No.5013/94 be quashed and the respondents were ordered to be discharged from the said offences alleged against them. Feeling aggrieved by the said judgment and order of the learned Sessions Judge, the petitioners have preferred this application under section 482 of the Code.

3. The petitioner has contended here that the complaint was not barred by limitation. It is also contended that while computing the period for the purpose of limitation, the time spent in obtaining permission or sanction was required to be excluded. That the learned Magistrate had considered this aspect while holding that the complaint was filed within limitation. The learned Sessions Judge has ignored the said provision and has committed illegality in holding that the complaint was barred by limitation. That the judgment and order of the learned Sessions Judge are therefore illegal and deserve to be quashed and set aside.

4. The applicant-State of Gujarat has therefore, contended that the present application be allowed and the

order of the learned Sessions Judge referred to hereinabove be quashed and set aside. It is further prayed that the learned Magistrate may be directed to proceed further with the trial of the criminal complaint according to law.

5. On receipt of the aforesaid application, rule was issued at the first instance and Mr M B Gandhi has appeared for the respondents in pursuance of the service of rule. I have heard the learned Advocates for the parties and have perused the papers. The learned APP has argued at length that since the offence in question is punishable with fine only, the complaint was required to be filed within a span of six months as provided in section 468 of the said Code. There is no dispute that under clause (a) of sub-section (2) of section 68, it is provided that when an offence is punishable with fine only, then the period of limitation shall be six months and under sub-section (1) of section 468 of the said Code, no court shall take cognizance of an offence of the categories specified in sub-section (2), after the expiry of the period of limitation.

6. On a combined reading of sub-section (1) and (2) of section 468 of the Code, it becomes clear that if an offence is punishable with fine only, the period of limitation is six months and if the complaint is filed beyond the period of six months, it cannot be entertained. At this juncture, the learned APP has argued that as stated in the order of the learned Magistrate dated 3.7.1996, the offence was committed on 21.6.1990. That thereafter, the original complainant had moved an application on 5.7.1990 for obtaining appropriate permission to file a complaint before the Court. That the said permission was given on 2.9.1993. That thereafter the complaint was filed on 6.9.1993. Learned APP also argues that in view of the aforesaid provisions of section 486 of the Code, the period between 5.7.1990 and 2.9.1993 is required to be excluded since the said period was consumed for obtaining permission in accordance with law. There is no dispute that the permission was required to be obtained before filing a complaint. Therefore, when a complaint was required to be filed and when the period as aforesaid was spent in obtaining permission, the said period is required to be excluded from consideration.

7. On this aspect of the case, it would be worthwhile to refer to the provisions made in Section 470 of the Code. The said provision states about the exclusion of time in certain cases. Sub-section (3) of

section 470 of the said Code is relevant for consideration. It states that where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. This means that while computing the period of limitation, the period spent for obtaining the permission in the present case was required to be excluded. Once the said period is excluded, then the factual aspect would be as follows:

21.6.1990 : Date of offence
5.7.1990 : Date of application for permission
2.9.1993 : Date of permission
6.9.1993 : Date of complaint

In the aforesaid view of the matter, if the aforesaid period between 5.7.1990 and 2.9.1993 is excluded, then it can be said that the complaint has been filed within a span of about 16 to 17 days only. As said above, the complaint was required to be filed within six months. However, instead of a passage of six months, the original complainant has taken only 16 to 17 days for filing the complaint. In that view of the matter, the complaint is treated to have been filed within limitation.

8. This aspect of the case was properly considered by the learned Magistrate while passing the order dated 3.7.1996. As against this, the learned Sessions Judge has not properly appreciated the provisions of sub-section (3) of section 470 of the code while deciding the said revision application.

9. Learned Advocate for the respondents has drawn my attention to the provision made in section 473 of the said Code. Section 473 of the said Code provides for extension of period for limitation in certain cases. This provision can be used only when a complaint or a prosecution has been filed beyond the period of limitation prescribed under section 468 of the Code. It is like a provision made in section 5 of the Limitation Act, 1963. However, when the complaint itself is within limitation, then in that event, it was not necessary for the original complainant to make an application for extension of period of limitation under section 473 of the said Code. Therefore, it is not possible to agree

with the argument of Mr M B Gandhi that the original complainant ought to have submitted an application for extension of the period of limitation in accordance with section 473 of the said Code and that the complainant ought to have proved the grounds for such extension to the satisfaction of the trial court. In that view of the matter, I am of the opinion that in the present case, the complaint was filed within limitation and therefore, it was not necessary for the original complainant to submit application for extension of period of limitation under section 473 of the Code. Therefore, this argument does not hold any field.

10. It is next contended that the present respondents were not responsible to answer the complaint of the complainant. Now this would be a subject matter of factual dispute between the parties. If the present respondents ultimately show that they were not responsible or answerable to the allegations levelled in the complaint, then such a plea could be raised before the trial court and the trial court will naturally deal with and decide the said dispute as and when raised by the present respondents. Therefore, this argument cannot help the contesting respondent.

11. It has also been contended by Mr M B Gandhi learned Advocate for the contesting respondent that one of the partners had pleaded guilty in the matter and the Asstt. Controller of Legal Metrology, Junagadh had fined Rs. 125/- and the said amount of fine was paid by him on 18.7.1990 by M/s. Makwana Automobiles and, therefore, the present opponents would not be responsible for the offence in question. Again this would be a disputed question of fact which can be entertained, considered and decided by the trial court after recording evidence. This is not a stage at which such disputes can be entertained by this Court. No other point was advanced by the learned advocates for the parties.

12. In above view of the matter, it is clear that the complaint was filed within limitation and the learned Sessions Judge has committed illegality in holding that the complaint was barred by limitation. In fact, when the complaint was filed within limitation, it was required to be dealt with in accordance with law before the trial court. This would mean that the judgment and order of the learned Sessions Judge are illegal and perverse and, therefore they are required to be quashed and set aside.

13. For the foregoing reasons, this Criminal Misc.

Application is allowed. The judgment and order dated 15.5.1997 recorded by the learned Sessions Judge, Junagadh in Criminal Revision Application No.130/96 are ordered to be quashed and set aside. The matter shall be placed before the learned Judicial Magistrate First Class, Junagadh being Criminal Case No.5013/94. The learned Magistrate shall deal with and decide the said complaint in accordance with law after due intimation to the respondents herein. Rule is made absolute to the aforesaid extent.

4.4.2002 [D P Buch, J.]
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